REMOVAL

OF THE CHEROKEE TRIBE

MEMORIAL MARCH 1880

Hurley, Jan 67

21st Congress, 1st Session. [Rep. No. 245.] Ho. of Reps.

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CHEROKEE AND OTHER INDIANS

MEMORIAL

OF

INHABITANTS OF THE STATE OF MASSACHUSETTS

In relation to the Cherokee and other Indian tribes.

March 1, 1830.

Read, and committed to the Committee of the Whole House on the state of the Union.

To the Senate and House of Representatives of the United States in Congress assembled.

The memorial of citizens of Massachusetts, residing in all parts of the Commonwealth, convened by public notice, and afterwards by adjournment, in the Hall of the House of Representatives, in Boston,

Respectfully represents:

That your memorialists feel impelled, by the most solemn and weighty considerations, to address the National Legislature on a subject of general interest, which seems likely to affect the character of our country and its Government, not only during the present generation, but through all future time. We refer to the claims of the Cherokee Indians, and other Indian nations in a similar condition, and to the guarantee which these nations have received from the Government of the United States

Your memorialists perceive that the interposition of citizens remote from the Indian territory is a subject of complaint. It must be obvious, however, that the people in every part of the Union may properly feel great solicitude respecting the preservation of our national character, and the performance of the duties of justice and humanity to the weak and defenceless tribes upon our borders. These are topics of general concern, and should be wholly separated from questions of local interest, and ever changing political parties. We stand on the broad ground of principle; and would act from an unbiassed regard to our national welfare and the happiness of mankind, disclaiming all intention of interfering in matters which do not properly belong to us, and all prejudice against the rights or interests of any State or States in the Union.

The territory of the four South-western tribes of Indians, lies within what are called the chartered limits of Georgia, Alabama, Mississippi, Tennessee, and North Carolina. The portion in the two States last named is small.

For the sake of distinctness, and to avoid unnecessary prolixity, your

memorialists would ask the attention of Congress to the case of the Cherokees especially, though the same principles, with immaterial variations, will apply to other Indian communities.

The Cherokee nation of Indians is a distinct community, yet remaining, of the original inhabitants of this continent. At the first settlement of the Southern States, these natives were found in possession of the lands which they now occupy. We need not here agitate the question whether civilized men may appropriate to themselves a newly discovered country, unoccupied, except by the occasional visits of migratory hunters? It does not appear that the Cherokees were ever a migratory people: they doubtless made excursions for the purposes of hunting; but they always had a home, and that home, from time immemorial, has been the same which they now possess. From their own country they excluded all persons but themselves. In this situation were they found by the first settlers in Georgia.

The immemorial occupancy, which has been briefly described, gives the Cherokees, as your memorialists conceive, a perfect right to a continued occupancy of their country, so long as they please. In other words, it is a perfect title, and the best of titles, to their country, involving both the right of continued occupancy and of self-government.

Though the claim, as a consequence of discovery, by Europeans, were much stronger and clearer than it is, still the assertion of such a claim must be precluded whenever the discoverers shall have agreed upon a line of demarcation between themselves and the original inhabitants. Such a line was in fact agreed upon between the first settlers of Georgia and the natives; and, from that moment, the whites were bound not to trespass upon the territory beyond the line.

During the half century that elapsed between the settlement of Georgia and the peace of 1783, the colony of Georgia, with the consent and approbation of the English Government, entered into successive treaties with the Creeks and Cherokees; in all which negotiations, the whites and the Indians were regarded as equally free and independent. The most common subjects of these treaties were, the purchase of land, the establishment of limits, the reparation of injuries committed in open war, and the restoration of prisoners captured during previous hostilities. In all these transactions, the Indians were called nations: their government, vested in chiefs, was considered as being legitimate, and as always in existence; and their territorial rights were expressly and solemnly recognized.

At the close of the Revolutionary war, Georgia, as an independent State, entered into new treaties with the Creeks and Cherokees, by which territorial limits were again fixed; and the fixing of such limits seems to your memorialists an admission that each party had no claim to land thus left in the possession of the other.

In the year 1785, the confederated States of North America made a treaty with the Cherokees, agreeing upon national limits, exchanging prisoners of war, providing for the apprehension and punishment of criminals, and making such other arrangements as are usual in treaties of peace between nations of Europe. It is a fact worthy of notice, that, in this first treaty made between the United States and the Cherokees, the latter are not only called, and considered as being, *a nation*, but they actually exercise every one of the powers which we had enumerated in the Declaration of Independence as the highest attributes of national sovereignty.

By the Federal Constitution, the treaty making power was vested in the

President and Senate of the United States, and the several States were inhibited from exercising it. Soon after the Constitution went into operation, the first President of the United States, with the aid of his very able Cabinet, and with the sanction of a Senate, more than one-third of whose members had been members of the Convention that formed the Constitution, laid the foundation of our present relations with the Indians. In no part of his administration are the proofs of his wisdom and circumspection more apparent.

The Indian communities residing within the limits of the treaty of peace of 1783 were implicitly admitted to be distinct communities; and the territory of the Indians was described as "*belonging to them*," and as not being under the jurisdiction of the legislative or judicial functions of the United States, or of the several States.

The Indians placed themselves under the protection of the United States, and became dependent allies. They consented that the United States should regulate their trade, and engaged that they would not make treaties with foreign powers, nor with separate States of the Union, nor with individuals of any State. They ceded a portion of their territory, and received a compensation for it. All these grants, on the part of the Indians, were manifestly for their own advantage, as well as for the advantage of the United States; and they were doubtless urged to make them, and did make them, from considerations of mutual benefit. The United States, on their part, solemnly guarantied to the Indian nations all their lands not ceded by the same instruments, and engaged to punish whites who should disturb the peace of the Indians. All animosities were to cease, and, in the language of the treaties, these compacts were to be executed "*with all good faith and sincerity.*"

The treaties were, in fact, thus executed by both parties, and formed the rule of intercourse between the United States and the Cherokees during nearly forty years, without a single act of hostility or bad neighborhood having been authorized by either party.

On the part of the United States, a law was enacted contemporaneously, so as to be, in effect, part of the same transaction—a law to regulate intercourse with the Indian tribes, by which heavy penalties were inflicted upon intruders, and rigorous measures were authorized to drive them from the Indian territory.

This act of legislation shows that the plan of our relations with the Indians was thoroughly understood by all departments of the Government, and that a disposition was cherished on all hands to execute the treaties with good faith. It has been said that barbarians are not capable of making a treaty; but an illustrious orator from our own State, thirty-five years ago, expressed himself, on the floor of Congress, in the following manner: "I see no exception to the respect that is paid among nations to the law of good faith. If there are cases, in this enlightened period, when it is violated, there are none when it is decried. It is the philosophy of politics, the religion of governments. It is observed by barbarians. A whiff of tobacco smoke, or a string of beads, gives not merely binding force, but a sanctity to treaties. Even in Algiers, a truce may be bought for money; but, when ratified, even Algiers is too wise or too just to disown or annul its obligation. Thus we see neither the ignorance of savages, nor the principles of an association for piracy and rapine, permit a nation to despise its engagements."

Your memorialists, in pursuing this investigation, find a renewal of the guarantee to the Cherokees, made seven years after it was first given; and,

in this renewal, the guarantee is declared to be "*forever*," which was obviously the meaning in the first instance. In the progress of numerous subsequent negotiations, the Cherokees yielded to the United States the free navigation of the rivers in the Cherokee Nation, and made several specific grants of roads through their country, as the progress of white population led the Presidents of the United States to solicit these privileges.

In the last treaty between the United States and the Cherokees, a compact which was negotiated at Washington eleven years ago, it is stipulated that the provisions of the intercourse law, which were made for the protection of the Indians generally, shall be continued for the security of the Cherokees; and thus the provisions of the intercourse law became, in fact, a part of the treaty. By the same compact, a *permanent* school fund is created, the annual income of which is to be expended in diffusing the benefits of education among the Cherokee Nation East of the Mississippi; that is, among the Cherokees maintaining their national character in their present residence.

Numerous stipulations, found in all the treaties, imply the sovereignty of the Cherokee Nation, except so far as that sovereignty was qualified by a voluntary acceptance of the offer of protection, and the regulation of trade, on the part of the United States. These stipulations are all perfectly intelligible, and perfectly consistent with each other; and your memorialists find nothing which has the appearance of bringing the Cherokees under the laws of the United States, or of abandoning them to the laws of the several States. On the contrary, a national Government of the Cherokees, always in existence, an inviolable territory, and a perpetual guarantee, meet the eye every where, without any thing of an opposite description, either express or implied.

Your memorialists do therefore humbly conceive that the United States are bound to the Cherokees, by as plain and positive engagements as language is capable of expressing, to defend them in the possession of their country, as a nation, and in the free exercise of their own laws and customs, till they shall voluntarily consent to change the existing relations of the parties.

Your memorialists would further state to your honorable body, that the Cherokees, thus standing on their original and perfect title, and thus fortified by treaties, were urged by successive Presidents of the United States to betake themselves to a civilized life, and to industrious habits, with the solemn assurance that they should remain permanently on the land of their fathers, and should find in the whites good neighbors, who would rejoice in their prosperity. They allege that they received letters of this import from President Washington and President Jefferson; and that the agents of the United States, residing among them, invariably made similar declarations.

The assertions of the President of the United States, whom they were taught to call their father, were always received by them as the decisions of the Government; and doubtless the solemn assurance of the Chief Magistrate of this country, made in his official character to an ignorant people, not versed in diplomacy, should not be invalidated, except for the most urgent and satisfactory reasons.

Your memorialists are aware that the Indians are urged to remove beyond the Mississippi from a regard to their own benefit, and with a view to their future prosperity; but the question of right should be first settled. If this can be clearly ascertained, it should be firmly established; the sugges-

tions of friendship may come afterwards. If the Cherokees have a perfect right to remain where they now are as long as they please, and to claim the protection of the United States against encroachments from every quarter, they should be told so in a firm and decisive tone, and the United States should honorably redeem their numerous and solemn pledges.

If the Government, in a spirit of sincere kindness and friendship, should advise the Cherokees to remove, let the Cherokees weigh the advice, and decide upon it as they think best. The question should be freely decided by them, and not by strangers.

But, as this question of supposed benevolence does in fact sway the minds of some, so that they cannot fairly look at the question of right, your memorialists feel bound to say that they have seen no reasons which satisfy them that the removal of the Cherokees would be for their benefit.

If the country West of the Territory of Arkansas is correctly described by Major Long, an authorized agent of the Government, it is uninhabitable. Other travellers declare that it is nearly all a boundless prairie, and destitute of running water during a part of every year. The portion which is wooded is extremely small, and would furnish a comfortable residence for only a part of the Southwestern tribes. There is reason to apprehend, therefore, that the removal of these tribes in a body would plunge them into a condition of great distress, and do them an irreparable injury.

If it should be admitted that the whole country is good, and capable of high cultivation, as some of the advocates of removal assert, the land will soon become an object of much greater cupidity to the whites than the present territory of the Cherokees ever can be. They are already retired within the mountains, at the head waters of rivers, in the most secluded spot in all the Southern part of our country. If they should be confirmed in their right of continued occupancy by the highest authorities of our nation, that right will be respected by all their neighbors, and their title will be more secure than any title which can be given them to a new country.

There is every reason to believe, that, within a quarter of a century from the present day, the pressure of population upon the frontiers of any reservation of good land near the western limits of Missouri, Arkansas, and Louisiana, will be much greater than it will be at the same period on the frontiers of the present Cherokee country. The cost of transportation is now less, as your memorialists are informed, from New Orleans to the western limits of the Arkansas Territory—that is, to the borders of the new country intended for the Indians—than it is from Augusta, Knoxville, or Nashville, to the Cherokee territory, which is the subject of the present controversy. Whenever the western prairies shall be habitable at all, they will be thronged with a more dense population than the mountainous region near the northwest corner of Georgia will ever be capable of sustaining.

The idea of removing Indians so far that they will not be followed by whites, or that good land possessed by them will not be an object of desire to whites, seems to your memorialists too visionary to require serious attention. We believe there is no place within the territorial limits of our nation where Indians can be protected in their possessions, unless the strong barrier of law can be interposed between them and their neighbors. It would seem impossible to assign them any place where they will not stand in the way of the whites, and where the supposed interest of the whites would not be promoted by their removal or their extinction. The barrier of law already existing for the protection of the Cherokees on the land of

their fathers, can be strengthened now more easily than a new barrier can be raised on a new field, and under far less favorable circumstances.

Should the four Southwestern tribes be removed, and placed near each other, on land assigned them by the United States, it appears to your memorialists that they would be thrown into a state of anarchy, and would lose the benefit of improvements already made by some of them in the practice of government.

For several years past, the advocates of removal have urged into public notice, and repeatedly laid before Congress, a plan which contemplated one government for all the congregated tribes; which government was to be administered by agents appointed for that purpose by the President of the United States. But this scheme, so long insisted on, has been suddenly abandoned, and it is now declared that each tribe is to be left to its own laws and customs. Considering that the removal must be gradual, and that the emigrants would go with heavy hearts, distrusting the professions of the Government, it would seem almost certain that they would give themselves up to despondency, and that every thing like subordination and public spirit would disappear, and general profligacy must be expected.

The progress of education, also, we fear, must be interrupted. The means of moral improvement could not be advantageously applied for a series of years, and the general condition of the people would be rapidly deteriorating. Some would probably remain a while, and attempt to live under the laws of the States; many would straggle away into the white settlements, and become vagabonds; and it would be natural for those who were collected beyond the Mississippi to become utterly dispirited, and to consider themselves deserted, betrayed, oppressed, and undone.

The suffering occasioned by a constrained removal of so many people—men, women, and children, the aged, the sick, and the poor—must be great. Your memorialists would by no means exaggerate the evils of the course which has been urged upon Congress. The fears which they entertain appear to them well grounded; and they respectfully refer it to the judgment of your honorable body to decide whether they are mistaken.

In conclusion, your memorialists do humbly entreat the National Legislature to interpose, and deliver the country from all apprehension of violated faith; to redeem the sacred pledges of our National Government; to protect the defenceless aboriginal tribes in their rights, and to give them assurance that all public engagements with them are to be fulfilled in the most honorable manner, according to the true intent and meaning of these engagements, and the understanding of the parties.

And to this end, your memorialists would respectfully suggest to your honorable body to consider the expediency of passing a declaratory act, making it the duty of the President of the United States to issue his proclamation, reciting the principal provisions of the intercourse law, and announcing the determination of the Government rigidly to enforce these provisions, as having been made in accordance with treaties, and for the protection of our dependent allies.

And your memorialists would further suggest, that, if a removal of any tribe or tribes of Indians to a different territory from that which they now inhabit, should seem to the Government desirable, and likely to promote the welfare of the Indians, suitable measures be devised and adopted to ascertain all the facts in relation to the subject which are necessary to arriving at a safe conclusion. When facts are ascertained, let the matter be proposed to

the Indians; and when their consent to a removal is fairly given, and a plan for their future government is approved by Congress, your memorialists, and their fellow-citizens who think with them on this subject, will cordially acquiesce in any decision thus matured.

And your memorialists, as in duty bound, will every pray.

BOSTON, *February* 8, 1830.

The foregoing memorial, having been read to an adjourned meeting of citizens from all parts of the Commonwealth of Massachusetts, convened by public notice, and held in the Representatives' Hall of the State House, on Monday evening, February 8, 1830, was approved by them, without a dissenting voice, and a resolution was adopted, by which the Chairman and Secretaries of the meeting were requested to forward said memorial to Congress.

In consequence of the foregoing request, the undersigned have hereunto subscribed their names, as Chairman and Secretaries of said meeting.

SAML. C. ALLEN, *Chairman.*

EDWARD REYNOLDS, } *Secretaries.*
HENRY HILL, }

BOSTON, *February* 15, 1830.